



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: RENEW WHITE
Regulatory Coordinator
Department of Medical Assistance Services

FROM: USHA KODURU
Assistant Attorney General

DATE: May 26, 2005

SUBJECT: Emergency Regulations to Implement New Health Insurance Premium Assistance to the Family Access to Medical Insurance Security Program

I have reviewed the attached emergency regulations that will modify state regulations and the State Plan for Medical Assistance Services relating to the implementation of new health insurance premium assistance to the Family Access to Medical Insurance Security Program (FAMIS) to replace the current program, known as Employee Sponsored Health Insurance.

Based on that review, it is this Office's view that the Department of Medical Assistance Services, pursuant to Chapter 951, Item 324 (L) and Chapter 584 (32.1-351(D), 32.1-351(2) and (3)) of the 2005 Appropriations Act, has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

The authority for these emergency actions is found in Va. Code § 2.2-4011, which provides that an "emergency situation" includes a situation "in which Virginia statutory law, or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment..." The amendments to the regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the 2005

Appropriation Act (2005 Acts of the Assembly), Chapter 951, Item 324(L) and Chapter 584 (32.1-351(D), 32.1-351(2) and (3)). Item 324(L); 32.1-351(2) and (3) state that DMAS shall simplify the administration of the premium assistance program provided to families with children who are eligible for FAMIS and who have access to an employee-sponsored health insurance program. The Department of Medical Assistance Services shall promulgate emergency regulations to implement provisions of this amendment within 280 days from the enactment date of this act.

This situation qualifies as an emergency as provided in § 2.2-4011(A)(ii) according to the language of the 2005 Appropriations Act, Chapter 951, Item 324(L); 32.1-351(2) and (3), . As such, these regulations may be adopted without public comment with the prior approval of the Governor.

Accordingly, with the prior approval of the Governor, these regulations will qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action, and this appears to have been accomplished in the “Agency Background Document.” In addition, the regulations shall be effective for no more than twelve months. As the Department intends to continue regulating the subject matter governed by this emergency regulation beyond 12 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations (and it appears that this has been done). The proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.

If you have any questions or need any additional information, please feel free to contact me at 786-1840.

cc: Kim F. Piner, Esquire

Attachment